80-2078
No. 80-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

DAMES & MOORE, a partnership,
Petitioner,

—against—

DONALD T. REGAN, THE SECRETARY OF THE TREASURY OF THE UNITED STATES OF AMERICA and THE UNITED STATES OF AMERICA,
Respondents.

On Petition For a Writ of Certiorari To The United States Court of Appeals For the Ninth Circuit Before Judgment

BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE*

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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

Citibank, N.A., The Chase Manhattan Bank, N.A., Manufacturers Hanover Trust Company, European-American Banking Corporation, European-American Bank & Trust Company, Marine Midland Bank, N.A., The Bank of New York, Morgan Guaranty Trust Company of New York, The First National Bank of Chicago and Bank of America National Trust and Savings Association (the "Banks") respectfully move this Court

for leave to file the accompanying brief in this case as *amici curiae:*

1. Supporting the petition by Dames & Moore for a writ of certiorari before judgment, and

2. Supporting the motion by the United States for an order (i) expediting consideration of the petition, (ii) expediting the schedule for briefing and oral argument and (iii) dispensing with the printing of briefs and the joint appendix.

The Banks have an interest in the subject matter of this case in that they are holding in excess of $1.5 Billion for the account of Iran and various Iranian entities. The United States has ordered the Banks to transfer these Iranian assets by June 19, 1981 in order to implement by July 19, 1981 the executive agreement with Iran which resolved the hostage crisis. However, the Banks as well as many other garnishees, have been served with judicial orders of attachment which direct them to continue to hold the Iranian assets.

The Banks and other garnishees risk possible liability to attaching creditors if they transfer the Iranian assets as ordered by the United States or sanctions imposed by the United States if they fail to transfer the assets. Neither the Petitioner in this case nor any other party before this Court is faced with the dilemma confronting the Banks and other garnishees. The Banks have no reason to believe that any party before this Court is in a position to present the argument set forth in the following brief.

Accordingly, it is respectfully requested that the Banks be given leave to file the following brief as *amici curiae.*

Dated: New York, New York
June 10, 1981

Respectfully submitted,
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BRIEF OF AMICI CURIAE

INTRODUCTION

Citibank, N.A., The Chase Manhattan Bank, N.A., Manufacturers Hanover Trust Company, European-American Banking Corporation, European-American Bank & Trust Company, Marine Midland Bank, N.A., The Bank of New York, Morgan Guaranty Trust Company of New York, The First National

Bank of Chicago and Bank of America National Trust and Savings Association (the "Banks") respectfully submit this brief as *amici curiae:*

1. Supporting the petition by Dames & Moore for a writ of certiorari before judgment, and

2. Supporting the motion by the United States for (i) an order expediting consideration of the petition, (ii) expediting the schedule for briefing and oral argument and (iii) dispensing with the printing of briefs and the joint appendix.

The Banks hold for the account of Iran and various Iranian entities in excess of $1.5 Billion and have received judicial orders of attachment in over 150 cases. However, notwithstanding the court orders of attachment, the Executive Branch of the United States government has ordered the Banks to transfer the Iranian assets by June 19, 1981 in order to implement by July 19, 1981, the executive agreement with Iran which resolved the hostage crisis.

Unlike *Electronic Data Systems Corporation Iran v. The Social Security Organization of the Government of Iran, et al., cert. denied,* No. 80-2035 (U.S. June 8, 1981), which the Court properly declined to review earlier this week, the *Dames & Moore* litigation squarely presents the critical issue whether judicial orders of attachment prevent the Banks from complying with the Executive's order to transfer Iranian assets. Bank of America and affiliates[1] of certain other *amici curiae* are among the garnishees who were served with orders of attachment in *Dames & Moore v. Atomic Energy Organization of Iran, et al.,* No. CV 79-04918 LEW (C.D. Calif.), which is the "Underlying Action" (Pet. Br. at 4) to the case now before the Court in which Petitioner seeks an injunction against Respondents' "interference" with the attachments. A dispositive deci-

[1] Citibank International—Los Angeles, an affiliate of Citibank, N.A.; Chase Bank International-Los Angeles, an affiliate of The Chase Manhattan Bank, N.A.

sion by this Court is necessary[2] before the July 19, 1981 deadline for the United States to fulfill its obligations to cause the transfer of Iranian assets held by domestic banks.

THE CRITICAL ISSUE IS WHETHER EXISTING ORDERS OF ATTACHMENT PREVENT THE BANKS AND OTHER GARNISHEES FROM TRANSFERRING IRANIAN ASSETS AS ORDERED BY THE EXECUTIVE BRANCH.

In order to implement the executive agreement as required by July 19, 1981, the United States must "act to bring about the transfer to the Central Bank [to be selected by Iran and the United States], . . . of all Iranian deposits and securities in U.S. banking institutions in the United States . . . ." Declaration of the Government of the Democratic and Popular Republic of Algeria, par. 6. The Banks are holding Iranian deposits and securities subject to Executive Order 12170 which initially blocked their transfer, and Executive Order 12294 which now directs their transfer to the Federal Reserve Bank of New York, as fiscal agent of the United States. However, the Banks also have been served with orders of attachment prohibiting them from transferring the Iranian assets.

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[2] Although numerous district courts and two courts of appeal have held that orders of attachment against Iranian assets must be vacated (*American International Group, Inc. v. Islamic Republic of Iran*, No. 80-02791 (D.C. Cir. May 22, 1981)) and *Chas. T. Main International, Inc. v. United States*, No. 81-1176 (1st Cir. May 22, 1981)), their decisions do not extend to the assets held in other jurisdictions. In New York, where over $1 Billion in Iranian assets are being held, the United States Court of Appeals for the Second Circuit on consolidated interlocutory appeal, remanded 96 cases to Judge Duffy in the Southern District of New York "with instructions to join the United States as a party in a single case in which issues raised by the Iranian Agreement and the Presidential Orders are squarely presented and to proceed with confirmation hearings in this case alone." *New England Merchants National Bank v. Iran Power Generation and Transmission Company, et al.*, Nos. 80-6254 *et seq.*, slip op. at 10 (2d Cir. Apr. 9, 1981). While the Court of Appeals retained jurisdiction, there has as yet been no decision on remand. A decision by this Court in *Dames & Moore* can effectively dispose of the same legal issues in the Second Circuit and elsewhere.

The Executive Branch has taken the position that the orders of attachment have been nullified by Executive Order and, therefore, are ineffective to prevent transfer of the Iranian assets.

The garnishee banks thus are caught directly between conflicting mandates of the judicial and executive branches. They face possible liability to the attaching creditors and sanctions for contempt of court if they transfer the assets in violation of the orders of attachment, but they risk civil and criminal liability if they fail to transfer the assets as ordered by the Executive. The garnishees need a dispositive decision, in an appropriate case such as *Dames & Moore,* determining whether the pending orders of attachment prevent them from transferring the Iranian assets.

Prompt resolution of the important constitutional issues presented by this case is vital to the national interest, and required before July 19, 1981 to prevent a default by the United States under the executive agreement with Iran. A proper case for this Court's consideration of these issues is one involving orders of attachment on garnishee banks. *Dames & Moore* is just such a case. It squarely presents the fundamental issue whether the actions of Presidents Carter and Reagan have a legal basis under the Constitution, as well as in the powers granted them by Congress under the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.* or otherwise.

The garnishees are demonstrably in need of a prompt resolution of the conflicting judicial and executive directives regarding the domestic Iranian assets.

Accordingly, we submit that the petition for writ of certiorari before judgment in the Court of Appeals be granted and that the Court grant the motion of the United States for expeditious consideration of the President's power to enter and implement the Iranian executive agreements.

Dated: New York, New York
June 10, 981

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I, Michael M. Maney, a member of the Bar of this Court, do certify that I caused three copies each of the annexed Motion For Leave To File Brief *Amici Curiae* And Brief *Amici Curiae* to be served this 10th day of June 1981, by mail, postage prepaid, upon the following counsel:

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